IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 12 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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INDUKUMAR C PATEL

Versus

COMMISSIONER OF WEALTH TAX

Appearance:

1. WEALTH TAX REFERENCE No. 12 of 1991
SERVED BY RPAD - (N) for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions are referred for our opinion in respect of assessment year 1979-80:-

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in making additions on account of compulsory deposit with interest in the total wealth?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not deducting gross amount of provision for taxation as a liability while applying Rule 1D of the W.T. Rules for determining the break-up value of shares of private limited companies?

2. At the hearing of the reference, none appears for the assessee though served. Mrs. Mona Bhatt, learned Standing Counsel appears for the revenue.

3. As far as question No.1 is concerned, our attention is invited to our decision dated 27-6-2002 of this Court in Wealth-tax Reference No.2 of 1989 wherein this Court pointed out that in view of the provisions of Section 7A inserted in the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974 w.e.f April 1, 1975, which provides that for the purposes of exemption under Section 5 of the Wealth-tax Act, 1957, the amount of compulsory deposit shall be deemed to be a deposit with a banking company to which the Banking Regulation Act, 1949 applies. This Court accordingly held in the aforesaid decision that the amount standing to the credit of the assessee as compulsory deposits (which would also include interest accrued on the deposits in the compulsory deposit) would not be liable to wealth tax.

Following the aforesaid decision, our answer to question No.1 is in the negative i.e. in favour of the assessee and against the revenue.

4. Coming to question No.2, our attention is invited to the decision of the Apex Court in Bharat Hari Singhania vs. Commissioner of Wealth-tax 207 ITR 1 wherein the Apex Court held as under:-

"If in the case of the balance-sheet of the company the amount of tax paid, which is shown as an asset and has to be deducted from the value of the assets as required by clause (1)(a) of Explanation II to rule 1D, is also shown as a

liability i.e. if that amount is included in the amount set apart as provision towards taxation, it would obviously have to be deleted from the column of liabilities- and this is also what clause (ii)(e) says. Clause (ii)(e) is in a sense complementary to clause (i)(a). The advance tax paid is not really an asset but the pro forma of balance-sheet in Schedule VI to the Companies Act requires it to be shown as such. What clause (i)(a) does is to remove the said amount from the list of assets for the purpose of rule 1D. It is then that clause (ii)(e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance-sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. This is the true function of both the sub-clauses."

Following the aforesaid decision, our answer to question No.2 is that Rule 1D of the Wealth-tax Rules for determining the break-up value of shares of private limited companies shall be applied in light of the aforesaid principles laid down by the Apex Court in Bharat Hari Singhania vs. Commissioner of Wealth-tax 207 ITR 1.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-